

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

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#### **304.01.05B TRANSFER PENALTY DEFINITIONS**

Under the transfer of assets provisions in Section 1917(c) of the Act, as amended by OBRA 1993, coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value must be denied. This same transfer prohibition is applicable to HCBS individuals and their spouses. The following definitions apply to transfers of assets.

**Fair Market Value**—Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.

**NOTE:** For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value.

A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual under an acceptable personal services contract, Medicaid presumes that services provided for free at the time were intended to be provided without compensation. Refer to the full discussion of personal services contracts later in this chapter at 304.01.05M.

Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable, such as a written repayment schedule agreed to at the time services were provided.

**Valuable Consideration**—Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.

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**Uncompensated Value**—The uncompensated value is the difference between the fair market at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.

#### **Transfer Penalty Definitions (Continued)**

**Institutionalized Individual**—An institutionalized individual is an individual who is:

- An inpatient in a nursing facility;
- An inpatient in a medical institution for who payment is based on a level of care provided in a nursing facility; or
- An inpatient in an ICF-MR facility

**HCBS Individual**—A participant in a long-term care alternative program. Although not institutionalized, this individual is considered to be receiving long-term care services. The eligibility criteria for the HCBS individual are the same as those for the institutionalized person, including application of transfer policy.

#### **Transfer of Asset Rules**

Transfer of asset rules apply to the following:

- **Resources**

Any real or personal property, annuity, liquid resource, or funds owned by the individual and his spouse that is given away, sold for less than fair market value, or used to purchase a promissory note, loan, mortgage, or life estate, waiving the right to receive any potential future resource that the individual might be entitled.

- **Income**

Any earned or unearned income (including lump sum) of the individual and his or her spouse that is transferred to another individual in the month of receipt, waiving the right to receive any potential future income that the individual might be entitled.